

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

- (1) A restoration involving a mere change in identity, form or place of organization, however effected;
- (2) A reorganization involving a liquidation into a parent corporation;
- (3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or
- (4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Partial withdrawal year means the third year of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline, or the year of the partial cessation in the case of a partial withdrawal caused by a partial cessation of the employer's contribution obligation.

§ 4208.3 Abatement.

(a) *General.* Whenever an eligible employer that has partially withdrawn from a multiemployer plan satisfies the requirements in § 4208.4 for the reduction or waiver of its partial withdrawal liability, it may apply to the plan for abatement of its partial withdrawal liability. Applications shall identify the eligible employer, the withdrawn employer (if different), the date of withdrawal, and the basis for reduction or waiver of its withdrawal liability. Upon receiving a complete application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4. If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for

abatement of its partial withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* Within 60 days after an eligible employer that partially withdrew from a multiemployer plan applies for abatement in accordance with paragraph (a) of this section, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4 and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4208.5 of this part, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4, then—

(1) The employer's partial withdrawal liability shall be eliminated or its annual partial withdrawal liability payments shall be reduced in accordance with § 4208.6, as applicable;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4208.7;

(3) Any bonds furnished under § 4208.5 shall be canceled and any amounts held in escrow under § 4208.5 shall be refunded to the employer; and

(4) Any withdrawal liability payments originally due and paid after the end of the plan year in which the conditions for abatement were satisfied, in excess of the amount due under this part after that date shall be credited to the remaining withdrawal liability payments, if any, owed by the employer, beginning with the first payment due after the revised payment schedule is issued pursuant to this paragraph. If the credited amount is greater than the outstanding amount of the employer's partial withdrawal liability, the amount remaining after satisfaction of the liability shall be refunded to the employer. Interest on the credited amount at the rate prescribed in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall be

added if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application. Interest shall accrue from the 61st day.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 4208.4, then the employer shall take or cause to be taken the actions set forth in paragraphs (d)(1)–(d)(3) of this section. The rules in part 4219, subpart C, shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3). For this purpose, a payment required under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) Any bond or escrow furnished under § 4208.5 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section.

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow.

(3) The employer shall resume or continue making its partial withdrawal liability payments as they are due to the plan.

(e) *Review of non-abatement determination.* A plan sponsor's determinations that the employer does not satisfy the requirements for abatement under § 4208.4 and of the amount of reduction determined under § 4208.6 shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA and part 4221 of this chapter, within the times prescribed by those provisions. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of ERISA. If the plan sponsor upon review or an arbitrator determines that the employer satisfies the requirements for abatement of its

partial withdrawal liability under § 4208.4, the plan sponsor shall immediately refund the amounts described in paragraph (e)(1) of this section if the liability is waived, or credit and refund the amounts described in paragraph (e)(2) if the annual payment is reduced.

(1) *Refund for waived liability.* If the employer's partial withdrawal liability is waived, the plan sponsor shall refund to the employer the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability).

(2) *Credit for reduced annual payment.* If the employer's annual partial withdrawal liability payment is reduced, the plan sponsor shall credit the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability) to future withdrawal liability payments owed by the employer, beginning with the first payment that is due after the determination, and refund any credit (including interest) remaining after satisfaction of the outstanding amount of the employer's partial withdrawal liability.

§ 4208.4 Conditions for abatement.

(a) *Waiver of liability for a 70-percent contribution decline.* An employer that has incurred a partial withdrawal under section 4205(a)(1) of ERISA shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the conditions of either paragraph (a)(1) or (a)(2) are satisfied for each of the two years:

(1) The number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section).

(2) The conditions of this paragraph are satisfied if—